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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,141	12/04/2003	Marraffa Andrew	22129CIP.PUS	6725
7590 05/10/2006				
Eugene E. Renz, Jr., P.C. 205 North Monroe Street Post Office Box 2056 Media, PA 19063-9056			EXAMINER DOOLEY, JAMES C	
			ART UNIT 3634	PAPER NUMBER

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/728,141		ANDREW ET AL.	
	Examiner		Art Unit	
	James C. Dooley		3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This non-final Office Action is mailed in response to amendment filed March 3, 2006, wherein claim 3 was amended, claims 1,2, and 4 were canceled, and new claims 5-12 were introduced.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The term "comprising" used in line 1 should be replaced. The term "means" used in lines 3 and 4 should be replaced.

Claim Objections

Claim 3 lines 3-4, "a single sheet material" should read --a single sheet of material--. See also claims 5 and 7.

Claim 11 line 2, recites "gussets welded to the web". Whereas claim 10, lines 1-2 recites, "the vertical side flanges have a gusset formed integrally therewith." This seems to be a contradiction.

Claim 11 line 2, "gusset welded to the web and base and web" should be corrected.

Claim 3 line 7 recites "means defining a plurality of openings..." If Applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant must either: (A) amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines; or (B) show that even though the phrase

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“means for” or “step for” is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 U.S.C. 112, sixth paragraph. However, since no function is specified by “means for defining,” it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim 7 line 6, “the vertical end flange” should read --the vertical side flange--.

Claim 7 lines 9-10, it is unclear how a support structure includes at least one gusset.

Applicant is further request to present the lines of the claims in order so that each element has proper antecedent basis. For example, claim 3 line 5 recites “batteries placed on the shelves”, and line 8 recites “compartments formed by the shelves,” however the shelves are not introduced until line 12.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 line 5 improperly relates the orientation of the web to the placement of the batteries. The recitation “a web extending between the side flanges directly

confronting batteries" in claim 3 lines 4-5 renders the claim indefinite. Batteries are not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to an unclaimed element. In this case, the metes and bounds of the claim cannot be ascertained, as one would not know whether their device infringed the instant claim until batteries were later added. See also claims 5,6, and 7.

Claim 3 recites the limitation "said configuration" in line 17. There is insufficient antecedent basis for this limitation in the claim. See also claims 5,6, and 7.

Claim 10 recites the limitation "the inner side edge" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Serban (US 6,349,837). Serban discloses a rack having end frame members (72) comprising a web disposed between a pair of vertical side flanges. Channel support member (70) are secured to the vertical side flanges of the end frame members (72). A base plate (32) provides anchor means (58), and the lower end of the vertical side flanges includes a gusset (16).

With respect to claims 8 and 9, the gusset (16) and base plate (12) are understood to be integrally formed with the end frame members by being fixedly secured to the end frame members. Figure 1, shows the base plate (12) extending transversely to the web of the end frame member (70). Applicant is referred to *In re Morris* (CA FC 44 USPQ2d 1023) wherein the court noted no records limiting the term "integral" to mean "of one piece" construction.

With respect to claim 10, the vertical side flanges include integrally formed gussets (16). Further the rack includes a generally rectangular base (12) having openings (58) suitable for securing the base (12) to a support surface (30). The base includes tabs (42) and slots (56) for positioning the vertical side flanges (70) on the base (12).

With respect to claim 11, Serban discloses generally triangular shaped gussets (16) welded to the base (12) and end frame member (62), (Col. 4 lines 15-19).

With respect to claim 12, the base includes a base channel (36) having a C-shaped cross-section which can mounted on the base and is capable of supporting batteries.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzman (US 6,202,570). Kurtzman discloses a rack having a pair of end frame members (12,14), each end frame comprising vertical side flanges (28,29) and a web (24) disposed between the flanges. Figure 1 shows a plurality of openings in the web (24). A pair of channel support members (16,18) are secured at opposite ends to the vertical flanges (28,29). By means of a bolt the channel support members (16,18) are secured to both the inside and outside of the vertical flanges. A base plate (20) having side gussets and anchors securing the vertical flanges to a support surface (Col. 2 lines 10-21). Kurtzman describes the connection of the channel support members and the construction of the gusset to be well known, and references Lerman (5,566,836) for further description (Col. 2 lines 3-6). The bolted connection between the channel

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support member and the vertical flanges is further described (Lerman, Col. 2 lines 41-43), the connection of the anchors, gussets and vertical flanges is further described (Lerman, Col. 2 lines 58-67, Col. 3 lines 1-17), and a more specific reference of the openings in the webs of the end frames are given (Lerman Col. 2 lines 44-46). These features are understood to be inherent in the disclosure of Kurtzman as they are disclosed by reference.

Kurtzman further discloses one shelf (34). Kurtzman does not disclose a plurality of shelves. As shown in figure 1 space is provided on the end frame members for supporting multiple shelves. Applicant is referred to *In re Harza* (274 F.2d 449, 104 USPQ 400 CCPA1955) wherein the court held that a mere duplication of parts has no patentable significance unless a new and unexpected result is produced. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to included more than one shelf on the rack of Kurtzman, thereby producing the expected result of providing more storage space.

Response to Arguments


Applicant's arguments with respect to claim 3 have been considered but are moot in view of the new grounds of rejection. The previous allowability of Claim 3 is hereby withdrawn in view of the second look at the Kurtzman ('570) reference.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James C Dooley
Examiner
Art Unit 3634

May 5, 2006


SARAH PURO
PRIMARY EXAMINER